

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MARK ANTHONY THORNTON,	)	
	)	
Petitioner,	)	
vs.	)	NO. CIV-07-0207-HE
	)	
JUSTIN JONES, ET AL.,	)	
	)	
Respondents.	)	

**ORDER**

Petitioner Mark Thornton, a state prisoner appearing *pro se*, filed a “Petition for Extraordinary Writ Directing Oklahoma County District Court to Assume Orig[i]nal Jurisdiction/Venue Over Petitioner’s Petition for Writ of Habeas Corpus and/or Petition for Writ of Mandamus.” Pursuant to 28 U.S.C. § 636(b)(1)(B), this matter was referred to Magistrate Judge Bana Roberts, who recommended that the petition be dismissed. The Magistrate Judge concluded that this court lacks authority to grant the relief requested — an order directing the Oklahoma County District Court to assume “jurisdiction/venue” over the petitioner’s state action or, alternatively, directing that court to transfer his action to another district court — and therefore lacks subject matter jurisdiction.

The petitioner filed an objection to the Report and Recommendation, once again urging the court to exercise jurisdiction and grant him the relief requested. The court has reviewed the grounds and authorities urged by the petitioner <sup>1</sup> and concludes that none of

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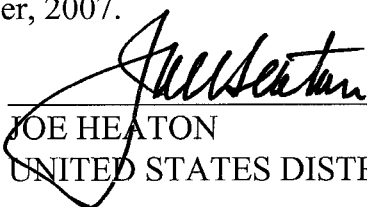
<sup>1</sup>*Among other authorities, the petitioner cited “28 U.S.C. Sec. 3626 (B)(i).” The section cited does not exist in Title 28 of the United States Code.*

them confer jurisdiction on this court to grant the requested relief. As the Magistrate Judge indicated, this court does not act as a “super-appellate” court nor does it have some general superintending control of state proceedings. As none of the authorities relied on by petitioner provide a basis for this court affording petitioner the relief he seeks, the court concurs with the conclusion of the Report and Recommendation.

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. # 10] and **DISMISSES** this action without prejudice.<sup>2</sup>

**IT IS SO ORDERED.**

Dated this 20<sup>th</sup> day of December, 2007.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>*The Report and Recommendation recommends dismissal with prejudice, however, the court concludes that the dismissal, which is based on a lack of subject matter jurisdiction, should be without prejudice. See Brereton v. Bountiful City Corp., 434 F.3d 1213, 1216 (10th Cir. 2006) (“A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction ... the dismissal must be without prejudice.”).*